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FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Federal-State Joint Board on
Universal Service

CC Docket No. 96-45 /

OPPOSITION OF SBC COMMUNICATIONS INC.

SBC Communications Inc. (SBC) hereby submits its opposition to AT&T's request for a waiver of section 54.711 of the Commission's rules that would allow AT&T to contribute to the federal universal service fund based on its projection of interstate revenues.¹ AT&T's two-page letter does not come close to satisfying the stringent standards for obtaining a waiver of the Commission rules. Moreover, granting AT&T's waiver request would effectively rewrite the Commission's universal service contribution rules at the very time the Commission is conducting a proceeding to consider its overall universal service contribution and recovery mechanism. Thus, AT&T's frivolous waiver request should be denied.

The Commission may waive its rules if special circumstances warrant a deviation from the general rules and such deviation would better serve the public interest than would strict adherence to the rules.² AT&T's letter claimed that, due to "sharply diminishing interstate and international revenues," the use of forecasted interstate revenues would allow AT&T to maintain the 9.9 percent charge that it unilaterally determined should be imposed on residential customers

¹ *Commission Seeks Comment on AT&T Request to Contribute to Universal Service Based on Projected Revenues*, CC Docket No. 96-45, Public Notice, DA 02-376, (rel. Feb. 26, 2002).

² See 47 C.F.R. § 1.3; see also *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

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and avoid increasing that charge to 11.5 percent.³ AT&T has not come close to satisfying the stringent standards for obtaining a waiver of the Commission rules.

First, AT&T's two-page letter fails to demonstrate that its circumstances are in any way unique. To the contrary, granting AT&T's waiver request would lead to a flood of similar waiver requests by carriers seeking to reduce their universal service contributions. Other long distance carriers claim to be experiencing the same decline in interstate revenues as AT&T. In addition, many incumbent local exchange carriers are experiencing a decline in their interstate revenues as a result of access lines that have been lost to competitors such as AT&T. If AT&T is entitled to forecast its interstate revenues, then fairness dictates that other carriers should have the same ability to forecast their interstate revenues.

AT&T's lack of special circumstances alone provides sufficient justification to deny its waiver request. The Commission has held that, if a requested waiver applies broadly to an entire class of companies, the appropriate course of action is substantive modification of the Commission's rules through a rulemaking proceeding.⁴ For example, the Commission denied a request for waiver of the equal charge rule filed by GTE — which claimed it had suffered competitive pressures and a loss of revenues because of the rule — on the grounds that GTE failed to show the equal charge rule had a different or greater impact on GTE than other carriers.⁵ The same reasoning applies here.

³ See Letter from Robert W. Quinn, Jr., AT&T, to Magalie Roman Salas, Federal Communications Commission, filed December 13, 2001, at ¶ 2.

⁴ See, e.g., *GVNW, Inc./Management and Citizens Utilities Company Applications for Review*, Memorandum Opinion and Order, 14 FCC Rcd 13670, at ¶ 8 (1999) (affirming the Bureau's denial of a waiver to adjust federal universal service fund distributions immediately after exchanges are transferred).

⁵ *In the Matter of Transport Rate Structure and Pricing; Petition for Waiver of the Transport Rules filed by GTE Service Corporation*, Report and Order and Further Notice of Proposed Rulemaking 7 FCC Rcd 7006, at ¶ 151 (1992).

Indeed, a waiver is particularly inappropriate in this case because the Commission is currently conducting a proceeding that may result in significant changes to its universal service contribution and recovery rules.⁶ The Commission cannot consider AT&T's purported decline in interstate revenues in isolation without addressing broader universal service contributions. AT&T has more than 1 million cable telephony subscribers,⁷ and it is not clear whether, and to what extent, AT&T is contributing to universal service on the basis of those revenues. Further, in the case of AT&T's more than 1.5 million cable modem service subscribers,⁸ it does not appear that AT&T is making any contribution to universal service based on those revenues under the Commission's current rules. The Commission must consider AT&T's waiver request in the overall context of how the universal service contribution rules affects *all* of AT&T's services.⁹ Given the Commission's concern about the effect of declining interstate revenues on the sufficiency and stability of the universal service fund, the Commission also must consider the broader implications of allowing one of the nation's largest (if not the largest) providers of interstate telecommunications services to forecast declining revenues without adjusting the methodology used by all other providers.

Second, the Commission already has rejected similar requests to waive its universal service contribution rules. In particular, several carriers sought to justify waivers of the contribution rules on the grounds that: (i) carriers with declining revenues must allocate a

⁶ *Federal-State Joint Board on Universal Service et al.*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Further Notice of Proposed Rulemaking and Order, FCC 02-43 (rel. Feb. 26, 2002).

⁷ See AT&T Group Earnings Commentary, Quarterly Update – Fourth Quarter 2001, at 11 (January 30, 2002).

⁸ *Id.*, at 12.

⁹ SBC notes that it is unclear from AT&T's letter which AT&T entity (or entities) is requesting the waiver and thus which AT&T interstate revenues would be forecasted.

greater percentage of their current revenues than carrier with stable or increasing revenues;¹⁰ (ii) carriers that have encountered a decline in long distance traffic will suffer extreme hardship in the absence of such a waiver;¹¹ and (iii) recovering universal service contributions based on historical revenues from current customers would result in a “mass exodus.”¹²

After considering these specific facts, the Commission determined that they were insufficient justification for granting the petitions for waiver, reconsideration, and forbearance. In particular, the Commission held that an alleged inability to recover contributions from current customers does not create special circumstances warranting waiver of the prior year contribution methodology.¹³ The Commission also found that carriers are not precluded from anticipating the possible effects of declining revenues in future years and reserving a portion of current revenues to meet future obligations.¹⁴ It also noted that the Commission’s rules do not require carriers to recover their contributions from customers.¹⁵ This precedent is directly on point and provides further justification for denying AT&T’s waiver request.

Third, AT&T’s attempt to rewrite the Commission’s universal service contribution rules would not serve the public interest. AT&T does not even attempt to argue that it is unable to actually recover its universal service contributions from customers. In addition, AT&T failed to

¹⁰ *Federal-State Joint Board on Universal Service, Petition for Forbearance from Enforcement of Section 54.709 and 54.711 of the Commission’s rules by Operator Communications, Inc. d/b/a Oncor Communications, Inc.*, CC Docket 96-45, Memorandum Opinion and Order, FCC 0C-51, at ¶ 4 (rel. Feb. 13, 2001) (*Oncor Order*).

¹¹ *Federal-State Joint Board on Universal Service, Petition of Federal Transtel, inc. for Waiver of the Universal Service Contribution Requirements Under Section 54.703, 54.709, and 54.711 of the Commission’s Rules*, CC Docket No. 96-45, Memorandum Opinion and Order and Order on Reconsideration, FCC 01-268, at ¶ 4 (rel. Sept. 20, 2001) (*Transtel Order*).

¹² *Id.*

¹³ *Id.* at ¶ 7.

¹⁴ *Transtel Order* at ¶ 7; *Oncor Order* at ¶ 10.

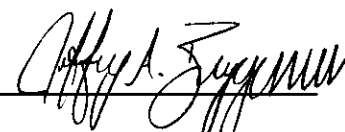
¹⁵ *Transtel Order* at ¶ 7.

provide any justification for why it should be granted a waiver so that it can continue to recover an amount that is almost 30 percent higher than the Commission's current universal service contribution factor of 6.8 percent. AT&T's desire to preserve its inflated residential universal service charges without attracting even more public and congressional scrutiny hardly provides the basis for a legitimate waiver request. Notably absent from AT&T's waiver request is any discussion about the universal service charge that AT&T imposes on its business customers, which makes it impossible to draw any connection between the Commission's universal service contribution rules and the charge that AT&T is imposing on its residential customers. Without a complete investigation of AT&T's overall recovery of its universal service contributions from all customers, the Commission has no basis to conclude that granting AT&T's waiver would benefit residential customers.

For these reasons, AT&T's waiver request should be summarily rejected.

Respectfully submitted,

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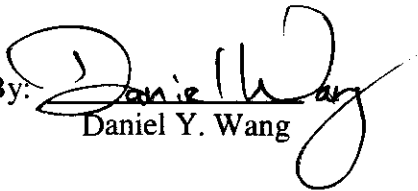
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CERTIFICATE OF SERVICE

I, Daniel Y. Wang, do hereby certify that a copy of the attached has been served on the parties below via courier on this 12th day of April 2002.

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